

WARREN COUNTY BOARD OF SUPERVISORS

COMMITTEE: CRIMINAL JUSTICE

DATE: FEBRUARY 28, 2008

COMMITTEE MEMBERS PRESENT:

SUPERVISORS TESSIER
BENTLEY
O'CONNOR
STEC
KENNY
VANNESS
TAYLOR

OTHERS PRESENT:

KATE HOGAN, DISTRICT ATTORNEY
ROBERT IUSI, DIRECTOR, PROBATION
JOHN WAPPETT, PUBLIC DEFENDER
MARCY FLORES, FIRST ASSISTANT PUBLIC
DEFENDER
AMY BARTLETT, FIRST ASSISTANT, COUNTY
ATTORNEY
JOY LAFOUNTAIN, ADMINISTRATOR,
ASSIGNED COUNSEL
FREDERICK MONROE, CHAIRMAN
JOANN MCKINSTRY, DEPUTY COMMISSIONER OF
ADMINISTRATIVE & FISCAL SERVICES
JOAN SADY, CLERK OF THE BOARD
SUPERVISOR GERAGHTY
JOANNE COLLINS, LEGISLATIVE OFFICE
SPECIALIST

Mr. Tessier called the meeting of the Criminal Justice Committee to order at 9:38 a.m.

Motion was made by Mr. VanNess, seconded by Mr. Taylor, and carried unanimously to approve the minutes from the previous Committee meeting, subject to correction by the Clerk of the Board.

Mr. Bentley entered the meeting at 9:39 a.m.

Privilege of the floor was extended to Robert Iusi, Director of the Probation Department, who distributed copies of the Agenda to the Committee members. *A copy of the Agenda is on file with the minutes.*

Mr. Iusi requested permission to fill two vacant Probation Officer positions; one full-time and one part-time.

Mr. Iusi explained that a Probation Officer had resigned to accept a position with the New York State Parole Board. This position supervises misdemeanor and felony offenders in all municipalities north of Warrensburg and is essential for

community safety and for the rehabilitation of the offenders that live in the respective towns, Mr. Iusi said.

Motion was made by Mr. VanNess, seconded by Mr. Kenny and carried unanimously to approve the Request to Fill Vacant Position of Probation Officer (full-time), base salary of \$38,978, Employee No. 11244, due to resignation and refer same to the Personnel Committee. *A copy of the Request to Fill Vacant Position is on file with the minutes.*

Mr. Iusi explained that as a result of the abovementioned vacancy, he had also requested approval to fill a part-time Probation Officer position in the Juvenile Justice Unit as this individual was seeking full time status in the Department. According to Mr. Iusi, the employee had taken the Probation Officer examination with expected results in April and he would like to promote this employee to the full-time position, subject to successful completion of the civil service examination. Additionally, he apprised the committee that 65 percent of the part-time Probation Officer Position was funded by the State with 35 percent local funding.

Mr. O'Connor pointed out that in the event that examination results indicate that she was not reachable on the list, Mr. Iusi would then have a full time position to fill.

Mr. Iusi responded that he would like to leave the part-time position open until the test results were available, in the event this individual was not reachable on the eligibility list. In response to a question Mr. Iusi reported that nineteen people took the open competitive exam.

Mr. Iusi summarized for the Committee that he was requesting approval to promote the current part-time Probation Officer to the full-time position, pending results of the civil service examination, and he would then proceed to fill the part-time position.

Motion was made by Mr. VanNess, seconded by Mr. Kenny and carried unanimously to approve the Request to Fill Vacant Position of Probation Officer (part-time), base salary of \$19,154, Employee No. 11394, due to promotion, and refer same to the Personnel Committee. *A copy of the Request to Fill Vacant Position is on file with the minutes.*

This concluded the Probation portion of the Criminal Justice meeting at 9:45 a.m.

Mr. Stec entered the meeting at 9:49 a.m.

Commencing the District Attorney portion of the Criminal Justice Committee, Joan Sady, Clerk of the Board presented the following requests from Kate Hogan, District Attorney:

- Authorization for Joy Savoie and Kevin Donlon to attend the New York State Sex Offender Management Training in Albany, New York on March 6, 2008;

Motion was made by Mr. O'Connor, seconded by Mr. Kenny and carried unanimously approving the request as outlined above. *A copy of the Authorization to Attend Meeting or Convention is on file with the minutes.*

- Authorization for Justine Cording, Joy Savoie, and Manon Affinito to attend the New York State Sex Offense Seminar at the New York State Police Academy in Albany, New York from May 19, 2008 to May 23, 2008.

Motion was made by Mr. Kenny, seconded by Mr. Bentley and carried unanimously approving the request as outlined above. *A copy of the Authorization to Attend Meeting or Convention is on file with the minutes.*

The District Attorney portion of the Criminal Justice Committee meeting concluded at 9:55 a.m.

Privilege of the floor was extended to Amy Bartlett, First Assistant County Attorney, who requested a resolution to consolidate the Conflict Defender contracts for the Northern Courts and the City of Glens Falls as such service was being provided for both locations by the Stanclift Law Firm, PC. She stated the effective date of the contract was through March 31, 2009, with no increase in the amount of the contract.

Motion was made by Mr. Bentley, seconded by Mr. VanNess and carried unanimously to approve the request as presented; and the necessary resolution was authorized for the March 21, 2008 Board Meeting. *A copy of the resolution request form is on file with the minutes.*

The Assigned Counsel portion of the Criminal Justice meeting concluded at 9:59 a.m.

Ms. Hogan entered the meeting at 10:05 a.m.

Privilege of the floor was extended to Marcy Flores First Assistant Public Defender who referred to handouts consisting of the quarterly breakdown for this past year, and she pointed out the bottom line figures were represented on the last page. The second handout, she said, was a memo she had addressed to Attorney Wappett which reflected 2007 statistics indicating savings to the County by having the Public Defender handle these cases. She stated that each year when these statistics were reported, the same dollar amount of \$808.80 was used to determine the average cost to handle a case, with an average of 10.78 hours per case.

Mr. Monroe and Mr. Wappett entered the meeting at 10:13 a.m.

Ms. Flores reviewed the number of cases handled and the cost per year, noting the total cost per year would be \$1,535,102 at a rate of \$75 per hour (State rate) which represents the amount that it would cost the County to handle the volume of cases currently handled by the Public Defender's Office.

Ms. Flores requested approval from the Committee to increase staffing due to the significant number of cases being handled. She stated that since the inception of the department, caseload numbers had increased by 27 percent, and the Department has recognized an increase of 17 percent from 2006 to 2007. Ms. Flores presented the requests as follows:

- to increase the hours of the Fourth Assistant Public Defender, Employee No. 11254, from 35 hours per week to 40 hours per week, increasing the base salary from \$39,296 to \$44,910 for a total increase of \$5,614; and
- to create a position of Fifth Assistant Public Defender, full time, base salary of \$46,000; and
- to increase the hours of the Investigator, Employee No. 1482 from 16 hours per week to 24 hours per week and increasing the base salary from \$20,028 to \$30,042 for a total increase of \$10,014; and
- to create a position of Confidential Secretary, part-time (19 hours per week), base salary of \$15,647.

Ms. Flores explained that the concern was with the volume of cases, as well as the ethical considerations. She stated that the Office of Public Defender seeks to maintain the highest standard of ethics with regard to its handling of all cases which incorporates quality of service, volume of cases, time allocation for each and

cost. She appealed to the Committee that after careful review of County expenditures, the items presented were reasonable requests.

Additionally, Ms. Flores apprised that the 2007 Indigent Legal Services Fund Annual Report (USC 195) was submitted today by the Assigned Counsel Office, which reports the figures for cases and hours.

A second report, requiring the signature of Mr. Monroe, is due March 1, 2008 and reflects the amount of money that comes from the Indigent Legal Services Fund. The County is spending less money for Legal Aid and Assigned Counsel this year when compared to last year due to the fact that the Department has contracts with the Tucker Stanclift Firm, the O'Dell Law Firm, and The Legal Aid Society for Family Court assignment.

As a result of the contracts and assignment, she said, the County is spending less and must justify/report to the State the reason(s) for the reduction in spending.

Ms. Flores concluded that State funding previously received by the County could be lost which would result in an increase in expenses in the Public Defenders Office; however, she said, the County could justify funding with this proposal. Ms. Flores implored the Committee that the Public Defenders Office worked hard for the clients and maintained constant vigilance with regard to containing the use of County funds and avoiding unnecessary spending.

Mr. Kenny inquired if any of these requests were presented at budget time. Ms. Flores responded that only one of the staff requests, that of increasing the hours of Fourth Assistant Public Defender, Nellie Halloran from part-time to full-time was brought forth at budget time; however, it was not approved at that time.

Mr. Stec requested further explanation of the average cost of \$808.80 to handle a case.

Mr. Flores explained that the figures being used were approximations derived at the time of the inception of this work in the Public Defenders Office and they were internal figures.

Mr. Stec inquired, after reviewing the figures, it appears the average cost per case is actually lower than the reported \$808.80 figure. Ms. Flores responded that she could not answer definitively because some types of cases take substantially more time and others require substantially less; and that these were average figures.

John Wappett, Public Defender also responded to the inquiry regarding the data or method of formulation leading to the \$808.80 figure. He said, two years ago when this activity began, a number was determined using the total number of hours and cases assigned out for a year, and what was charged for services. The Conflict Defender role which commenced last year, caused a decrease in County expenditures as reported by Mr. Lynch which clearly proved the success of the Department. He explained that the most significant difference in savings is with regard to hours and cases and not having to charge the \$75 per hour. He added that the numbers show that the Public Defenders Office can accomplish this at approximately half or a third of the cost of the Assigned Counsel, which handled 25% of cases, as the other 75% were conflicts. Assigned Counsel, he said, was operating at roughly the same ratio and savings had become evident for the first time.

Mr. Stec noted the concern regarding the State, as they will see the reduction in county spending. The concern, according to Mr. Wappett was with the Indigent Services Fund and, he said, we were approaching the critical saturation point after which time the Public Defender would be obligated to turn away cases, and as a result, would drop back to the Assigned Counsel rate of \$75 per hour. He reported that this trend was the same across counties, and the probable cause of the breadth of the increase was in part generated by the economy. He added that the Department was seeing more individuals that technically qualify for Public Defender Services, who may have previously opted to hire a lawyer, but were now pressed by the economy, coming into the Department for assistance.

Mr. Wappett apprised that both Judge Hall and District Attorney Hogan were supportive of the requests.

Responding to an inquiry from Mr. Tessier regarding why these requests were not brought forth at budget time, Mr. Wappett responded that only the request for an increase in hours and salary for Ms. Halloran was brought up as he did not have data to substantiate the other requests at budget time.

Mr. VanNess asked where the approximately \$100,000 increase would come from, should the requests be approved as presented.

Mr. Stec inquired about which requests would be most critical should the full request be tabled until the next budget year. Mr. Wappett replied that the most critical changes needed at this time would be to raise the Fourth Assistant Public Defender to full-time and to add the full-time Fifth Assistant position.

Following discussion a motion was made by Mr. VanNess, seconded by Mr. Stec and carried unanimously to approve the requests to:

- increase hours for the Fourth Assistant Public Defender from 35 hours to 40 hours per week and to increase the base salary from \$39,296 to \$44,910; and
- to create a position of Fifth Assistant Public Defender, full-time, base salary of \$46,000.

The requests were referred to the Finance and Personnel Committees. Copies of the resolution requests are on file with the minutes.

Mr. Geraghty asked, with reference to either a partial or full approval of the four positions what would be the most efficient option and would a partial approach improve efficiency.

Mr. Wappett explained that the two least efficient positions would be that of the Confidential Secretary with split responsibilities between the Public Defender and Assigned Counsel Offices, and increasing the hours for the Investigator. Mr. Wappett emphasized that the second Attorney was essential at this time with the saturation point rapidly approaching. He stated that if all four positions were approved today, this level of staffing should be sufficient for the next two years. With a partial approval, he said, he would submit requests in the next budget year.

After a short discussion Mr. Wappett apprised that it was critical to seek attorneys with experience and that most experienced attorney's were only interested in full-time employment. He said, in the interest of long term efficiency it was best to hire an experienced attorney.

Mr. Tessier questioned if all of the requests were approved at this time, would this be sufficient until the year 2010 and Mr. Wappett replied that even if the Department maintained the same rate of increase, he expected this level of staffing would be sufficient.

Mr. Tessier said he supported approving all four requests at this time.

Mr. Geraghty agreed that with adding a Confidential Secretary, the entire office could proceed with optimal efficiency.

Mr. Kenny referenced the original forecast of this years budget whereby five additional hours were requested as compared to the current requests which were significantly more.

Mr. Wappett said that he had forecast the expected need for additional staff to the Committee last September; however, he said he did not have the figures to substantiate the requests at that time. Additionally, he said, his effort, as advised, was to reduce and not increase the budget.

Mr. Kenny said that while he accepted Mr. Wappett's explanation as commendable, the Supervisors must ask taxpayers for more money, and such a request may not be well received so early in the year.

Mr. Geraghty asserted the importance of efficiency, getting the work done, and the appropriate use of skills which, he said, he felt was sufficient justification for the requests.

Mr. Stec reminded the Committee that prior to the current method of case handling, the County paid 1.5 million dollars for these services. He said the request for personnel at this time was not due to any fault on the part of a department head and stated that he felt all four requests were necessary.

Mr. VanNess referenced the position to be shared with Assigned Counsel with regard to confidentiality issues and Mr. Wappett apprised that there is no legal requirement with a "Chinese wall" (barrier to avoid conflict of interest).

Ms. Bartlett clarified that this was not so much a matter of legal statutes; however, she added, the issue lies with case law, and she offered to review the case law in this regard.

A discussion ensued.

Motion was made by Mr. VanNess, seconded by Mr. Stec and carried by majority vote to approve the four requests as presented and to refer same to the Personnel Committee for consideration, with Mr. Kenny voting in opposition. *Copies of the Resolution Request forms are on file with the minutes.*

Mr. Taylor stated that while he agreed to all requests as presented, he said, there was not enough information presented prior to the meeting time which burdens the Committee with a sudden and substantial request for approximately \$100,000.

Ms. Sady noted that departments have been requested to send their meeting agendas to their committee and to the Administrator prior to the meeting.

Mr. Stec requested that a memo be sent advising Department Heads of the need to distribute their meeting agenda to their respective Committee in advance of the meeting.

With no further business before the Committee, the Public Defender portion of the Criminal Justice Committee meeting was adjourned at 10:41 a.m.

Privilege of the floor was extended to Joy LaFountain, Administrator, Assigned Counsel who distributed some statistical information regarding the Assigned Counsel Office to the members of the Committee. *A copy of this information is on file with the minutes.*

As a result of a request from Mr. Payne, Ms. LaFountain pointed out Table A, which included poverty guidelines. She noted that this report contained critical information and urged all Committee members to peruse it, and call or email her with any questions.

Ms. Hogan requested an executive session to discuss Criminal Investigation.

Motion was made by Mr. VanNess, seconded by Mr. Stec and carried unanimously that executive session be declared pursuant to 105 (c) of the Public Officers Law.

Executive Session was declared from 10:41 a.m. to 10:55 a.m.

The Committee reconvened and Mr. Tessier noted that no action was taken pursuant to the executive session.

There being no further business to come before the Criminal Justice Committee, on motion by Mr. Stec, seconded by Mr. VanNess, Mr. Tessier adjourned the meeting at 10:56 a.m.

Respectfully submitted,

Joanne Collins, Legislative Office Specialist